The Solicitors' Journal

Vol. 92 December 11, 1948 No. 50

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CURRENT TOPICS

The West Surrey Law Society

THE West Surrey Law Society, which has just completed one year of its life, has ninety-seven ordinary members and three honorary members, altogether representing about 90 per cent. of the total possible membership. This highly creditable achievement was announced by the President, Mr. A. J. ATKINS, at the annual general meeting held on 26th November, 1948. Another interesting point which he made was that, at the third general meeting, held on the 4th November, 1948, the Society decided to adopt a minimum scale of conveyancing fees for solicitors practising in the area. A practice sub-committee of the Society has recommended that only one set of conditions of sale should be employed, and that those should be The Law Society's General Conditions. An application had been accepted, Mr. Atkins stated, for membership of the Associated Provincial Law Societies. We congratulate this Society on the great amount of work they have accomplished in a short time.

Professional Ethics

THE solicitors' profession is not unique in its problems of conflict between duty to the client and duty to the public. The client who tells his adviser the truth and expects him either to suppress it or to varnish it in court, as well as the client who unwittingly discloses that he has broken the law, is as familiar to other professions as he is to the legal profession. In a lecture on "Taxation, Auditing and Ethics," by C. H. KOHLER, F.C.A., reported in the *Accountant* of 4th December, 1948, the lecturer likened an auditor's function to that of a solicitor, but said that his functions extended beyond the duties of an advocate, and that he must be judicial in producing accounts and evidence to an inspector of taxes. The advocate only brings facts and arguments forward that favour his client; he knows that his opponent will emphasise the other side. Our view is that it would be a poor advocate who did not take up a judicial attitude towards his own facts and arguments before going into court, bearing in mind that by helping the court he best helps his own client. There is this difference, however: that, as the lecturer admitted, there are times when adherence to the law and the best accountancy practice will make enemies and lose business. In the case of solicitors, no business worth having is lost by adherence to the law and the best practice. The temptations to the accountant are consequently more severe than the temptations to the lawyer. Their ethics need not necessarily be identical with those of the lawyer, but there is no reason why they should be lower, and though a young profession, as the lecturer said, they have a tradition of accuracy and integrity to be handed down and maintained.

The Solicitor's Gown

"To robe or not to robe" expresses a dilemma which frequently confronts the solicitor-advocate, especially if he is unused to county court practice, where the registrar robes in court and expects solicitors to robe, but does not robe in chambers. The matter becomes more complicated when, for quite proper reasons of convenience, the registrar sits in court as in chambers. On such occasions it is not unknown for a raw young advocate hastily to borrow an usher's gown so as to present himself in seemly fashion. In Eire, where there are presumably more lawyers willing to break with tradition than there are here, the Council of the Incorporated Law Society, after circularising the Bar Associations, found that views were divided on the subject of the wearing of gowns by solicitors in any court. The vice-president, Mr. R. QUIRKE, at the half-yearly meeting on 26th November, suggested that in areas which favoured it the gown should be worn as far as possible. Another speaker said that he favoured the wearing of gowns by solicitors, as it helped to increase the majesty of the law. Other members commented on the lack of robing facilities in the courts, especially in Dublin, and the urgent need of proper court buildings throughout the country. So long as some lawyers robe, this controversy will persist as between the dignity of the law and the convenience of the advocate. Human nature being what it is, the necessity for using the trappings and suits of dignity may well long continue. It is as well to recall that the actors in the classic plays of ancient Greece did not disdain the heavy mask to add the solemn air of tragedy.

The Town and Country Planning Act, 1947, and Valuation for Estate Duty

WHAT effect has the Town and Country Planning Act, 1947, on the value to be put on undeveloped or partly developed land for the purposes of estate duty? A useful note on this question appears in the December issue of the *Journal of Planning Law*, which states that in answer to an inquiry on the point the Board of Inland Revenue expressed the opinion that where, in the case of deaths on or after 1st July, 1948, the land is under the Act "restricted to its existing use," the value of the land for estate duty purposes should be "the fair market value for existing use." This seems to foreshadow an extension into unexpected realms of the current

controversy as to what constitutes the fair market value for existing use. The Board also stated, according to the *Journal of Planning Law*, that, although it would be necessary in estimating the principal value to consider whether the deceased's interest was affected by the Act, if the death occurred on or after 6th August, 1947 (the date of passing of the Act), and before the appointed day (1st July, 1948) the interest passing would not have been subject to the general restriction imposed by the Act. Some further elucidation seems desirable as to the meaning of " affected by the Act " in this connection. Between the passing of the Act and the appointed day the value of undeveloped land was certainly affected by the existence of the Act, though not as a matter of law affected at that time by its provisions.

Continuing Annuities: Estate Duty

THE Board of Inland Revenue have announced a change of practice in the method of charging estate duty on the occasion of the death of a person entitled for life to an annuity continuing after his death or to a share of such annuity. The practice hitherto, on the death of an annuitant other than the last survivor, has been to claim estate duty only in respect of the annuity or the deceased's share thereof as passing to the other annuitants or annuitant. Duty has been assessed on the actuarial value of the amount or share for the remaining lives or life, and not on the " slice " of capital producing the income enjoyed by the deceased. On the death of the last survivor estate duty has been claimed on the basis of cesser of interest in respect of capital producing the annuity. The announcement quotes Green on Death Duties, 2nd ed., at p. 47, as follows: " While the validity of the claims under s. 1 (of the Finance Act, 1894) is unquestionable, it may be doubted whether the fact that an annuity passes is any real answer to the proposition that the deceased annuitant had an interest in the capital which ceased on his death," and states that the Board of Inland Revenue are now advised that duty is chargeable under s. 2 (1) (*b*) of the Finance Act, 1894, upon the capital set free by the cesser of the annuity or share of annuity, and that estate duty will in future be claimed on this basis. It is added that a case is likely to come before the courts in the near future in which the claim of the Estate Duty Office is being resisted.

Another move for the Estate Duty Office ?

A NUMBER of questions put to the Chancellor of the Exchequer in the House of Commons on 7th December by two prominent solicitor-M.P.'s, Mr. JANNER and Brigadier F. MEDLICOTT, revealed the anxiety felt amongst solicitors over the proposed further move of the Estate Duty Office to Worthing. Brigadier Medlicott in a supplementary question rightly stressed the value of the present facilities for business to be transacted " over the counter " and drew attention to the delay in administering estates which would be caused if the bulk of metropolitan business had perforce to be done by post. To this Sir STAFFORD CRIPPS could only reply that the department had already been out of London a long time. He added that the proposed move was not likely to take place for some considerable time—a fact which affords grounds for hope that better counsels will prevail.

Pensions Appeal Tribunals Bill

EX-SERVICE men's claims for disability pensions arising in peace-time, it was announced by the MINISTER OF PENSIONS in the Commons on 27th July, are to be dealt with as from some future date by his Ministry. That date is brought nearer by the second reading of the Pensions Appeal Tribunals Bill in the Commons on 26th November. The Minister explained that hitherto in peace-time, with our armed forces composed entirely of volunteers, there has been no system of appeal about pensions to independent tribunals. Now, with compulsory military service, he continued, it is reasonable to continue in peace-time the practice of war-time, and so a right of appeal from the rejection of a claim to pensions will in future apply to all members of the forces, men and women, volunteer and conscript. The appeal tribunals are to be independent of the Minister, and appointed by the Lord Chancellor, and from them there is to be an appeal to the High Court in England or to the Court of Session in Scotland on a point of law. Claims arising before 3rd September, 1939, are to be excluded. Clause 2 gives a right of appeal to the courts where a non-statutory special review tribunal had upheld the Minister's adverse finding on an application to review a case on the ground that recent decisions had made it impossible to uphold a previous rejection. During the debate Mr. PAGET, K.C., paid a tribute to the Appeal Tribunal and to the work of Mr. Justice DENNING. Time and time again Mr. Justice Denning had brought the ruling back to what Parliament really intended—that the onus of proof should be fairly on the Government. Mr. Paget ended with the observation that the precedent of a High Court judge over and above departmental tribunals was one the worth of which had been proved.

Offences by Drivers of Naval, Marine, Military and Air Force Vehicles

ON 24th November, 1948, a circular from the Home Office (No. 248/1948) was issued, referring to the Circular 571,321/33 dated 26th July, 1932, in which attention was drawn to the consequences attaching to the disqualification from holding a driving licence of Naval, Marine, Military and Air Force drivers convicted of motoring offences. In view of the decisions in several High Court cases, notably the case of *Whittall* v. *Kirby* [1947] K.B. 194, this circular is now modified so far as it deals with cases where, in the absence of " special reasons," disqualification follows automatically upon conviction. There are, the circular states, two types of case to be differentiated from each other—(i) where a member of the services is convicted in connection with the driving of a private car or cycle; (ii) where a member of the services is convicted in connection with the driving of a service vehicle. The discretion of the court in the first type of case to limit disqualification to a particular class of vehicle, as indicated in the circular of 26th July, 1932, so that the driver will still be able to drive service vehicles of other classes, would not appear to be affected by the decision in *Whittall* v. *Kirby*, but in the second type of case it would appear that a court would not be justified in regarding Naval, Marine, Military or Air Force service alone as a " special reason " for withholding disqualification.

Recent Decisions

In *Caminer and Wife* v. *Northern and London Investment Trust, Ltd.*, on 26th November (*The Times*, 29th November), the LORD CHIEF JUSTICE held that where an elm tree on the defendants' property fell on the plaintiffs, who were in a motor-car on the highway, the defendants had been guilty of negligence in not topping or pollarding their elm trees with sufficient frequency, as the accident was partly due to that fact and partly due to the well-known fact that elms were liable to fall, owing to disease of the roots.

The Court of Appeal (BUCKNILL and DENNING, L.JJ., and HODSON, J.) held, on 29th November (*The Times*, 2nd December), that the parties to any proceedings instituted in consequence of adultery, and the husbands and wives of the parties who, by s. 198 of the Judicature Act, 1925, " shall be competent to give evidence in the proceedings," are also compellable to give such evidence, subject to the privilege of not being bound to answer any question showing that they had been guilty of adultery.

In *R.E.L.* v. *E.L.*, on 30th November, PEARCE, J., held, in granting a decree of nullity to a wife petitioner, that where the respondent did not contest the allegation of incapacity, but the petitioner had by her voluntary act borne the respondent a child as a result of artificial insemination, she had not thereby approbated the marriage so as to make it in the public interest and in the interests of the parties to refuse a decree.

THE CASE FOR CHARITIES

EVERY year shortly before Christmas we have lent our support in these columns to the appeals made by charitable organisations. This year we are again asking you to devote careful attention and, where possible, active support to these deserving causes. At the same time, however, the occasion seems opportune for a more general consideration of the function of charities to-day.

There is no doubt that there is a very widespread notion that charities have served their purpose and are now scarcely necessary, if not actually outmoded. Their usefulness and even their good faith are quite often seriously questioned. With the growth of social security "from the cradle to the grave," sponsored and planned by a State prepared to organise everything from baby's milk to grandfather's burial, there might even seem to be some justification for this comfortable doctrine. In fact, of course, it is an empty assumption. Like many another argument which absolves the individual from personal responsibility, it takes an unreal view of life. Obsessed by the Plan, it is blind to the thousands who are actually at this moment homeless, hungry, comfortless and uncared for. As though all dogs with licences were happy dogs!

For to-day there is not less scope for charities: there is more. Relieved of some of their more onerous and fundamental obligations, charitable organisations may now be able to devote more time and effort to needs which simply had to be passed by in the days of more acute poverty and distress. For no matter how comprehensive the regulations, how far-seeing and wise the administration, no State as we know it could ever hope to cater for all the human afflictions of mind, body or estate. Nor, we submit, would any generous-minded citizen of this country like to see the State granted the necessary powers and facilities to undertake such a task.

Apart, then, from the great obligations now being shouldered by the State-sponsored social services—and that means, in effect, you and I—what are the actual needs of those for whom the various charitable organisations make their appeal? They need personal help. The orphans, the blind, the cripples, the disabled ex-soldiers, sailors and airmen, the convalescents, the gentlewomen in reduced circumstances, the ex-prisoners, the shipwrecked mariners, the deaf, the dumb, the sufferers from incurable diseases, and even the animals—all who form the subject of the appeals regularly advertised in this journal call for much more than the "adequate provision" generally envisaged by the State, for much more, too, than the funds requested by the charitable organisations themselves. They call for the personal touch, for kindness, imagination, forethought, not so much from society as a whole, as from ordinary members of society. This is the work of the average charitable organisation, and this is the purpose for which it needs—often desperately needs—money.

Nothing in all this is intended to disparage the value of social security and social services, but rather to emphasise that these admirable projects have in no way eliminated the need for individual generosity. There is always the case not covered by the regulations, the man who does not qualify for a pension, the child who somehow gets left out of things . . .

And so this journal regards it as an honour to be able to prepare something in the nature of a brief for those who cannot plead their own cause and for whom society has *not* made "adequate provision." Departing from our usual custom, we are refraining from mentioning any charitable organisation by name, preferring to draw your attention to the people they serve. Almost all the organisations who regularly advertise in these pages depend entirely on voluntary subscriptions. A glance through the Annual Charities Register will reveal how slender are their resources. Often even the smallest addition to regular income may make all the difference between success and failure—between someone's happiness and disappointment.

The various homes and societies which care for the hundreds of infants and young children for whom "there is no room at the inn" are still not subsidised or nationalised, and they still need generous financial help. The Children Act has certainly not lessened the work of the homes, hospitals, schools and societies which look after unwanted, neglected or ill-treated children, and there are still all the children who are deformed, deaf, dumb, blind, mentally defective, or otherwise in need of special care and attention. Many of these children still go without help—for lack of money.

Children, moreover, need more than care and protection: they need what some would call "vocational guidance" and others "a good start in life." To-day many excellent voluntary organisations and schools supplement the national educational system, carrying on a tradition that was young in the days of William of Wykeham and Henry VI. All of them deserve support, none more than those which cater for the handicapped child, teaching him a trade and guiding him towards self-reliance. As always, the expenses are many, the benefactors few.

It is sometimes lightly assumed that the introduction of the National Health Service has ended the need for voluntary aid to hospitals. It would be a depressing outlook for the sick if such a notion gained ground. The new Act provides for State funds for maintenance, but voluntary help is still urgently needed for supplementary services outside the scope of the State system. If hospitals are to be comfortable and friendly places as well as efficient organisations, there must be a thousand and one comforts and "extras," all of which cost money. Financial assistance is still urgently needed not merely by several well-known hospitals but by the great associations which serve many hospitals. The need to-day is probably more urgent than ever it was.

Perhaps even more vital is the need for medical research. In particular, the centres devoted to the cause, cure and control of such dread diseases as cancer and tuberculosis always need financial aid if they are to maintain and extend their work.

Then there are the convalescents, the permanent invalids and the disabled. Pensions and allowances are often pitifully inadequate, comforts and even necessities miserably scarce, for those who have had the misfortune to be laid low by some accident, lengthy illness, nervous complaint or incurable disease. Such sufferers can never hope to catch up with the cost of living; their official allowances certainly never do. Nor should those of us who were fortunate enough to come through the war unscathed ever forget the needs—the just deserts, rather—of those who lost their sight or a limb or their health. These men and women need our help not merely for medical or surgical treatment and for personal comforts but in order that most of them may learn a trade and be provided with employment.

For the legal adviser who is asked to suggest the name of a charitable organisation either for the purpose of a donation or a legacy, there may seem to be a bewildering array of names to choose from. Inevitably, some of the most widely publicised and compelling appeals spring most readily to mind, but it may well be that the very multiplicity of these appeals makes it more desirable—and even easier—for the final recommendation to be appropriate to the interests and means of the intending benefactor. Thus for professional men there are many benevolent associations devoted to the needs of retired members of the profession concerned, while similar bodies cater for the needs of ex-servicemen, seamen, printers, and many others. There are also several excellent societies who provide for those about to start their careers, providing hostels and clubs, or advancing grants of money.

In a country noted for its love of animals it is often distressing to read so many stories of their ill-treatment or neglect. There are, of course, several very well-known societies which exist for the sole purpose of preventing this type of cruelty and of providing care and treatment for sick animals, but how often is it realised that these bodies could not carry on their work without regular voluntary financial assistance? This is a need which no animal lover should pass by.

All these needs, then, constitute the case for charities. To the charitably minded social reforms never go far enough; they only reveal how much there is to be done. The case for charities has rarely been better expressed than in the words of a wise man who lived some eight centuries ago: "Anticipate charity by preventing poverty; assist the reduced fellowman by a considerable gift or a sum of money; or by teaching him a trade, or by putting him in the way of business so that he may earn an honest living and not be forced to the dreadful alternative of holding out his hand for charity. This is the highest step and the summit of charity's golden ladder." Those who are offended by charitable appeals are recommended to "anticipate charity."

POTHOLES AND FLAGSTONES

THE "Men dwelling in the County of Devon" who in 1788 successfully demurred to the attempt of Russell and others to recover for damage to the plaintiffs' wagon in consequence of failure to maintain a bridge forming part of the highway for which the inhabitants of the county were chargeable (2 Term. Rep. 667) certainly left upon modern law a mark that shows little sign of fading with the passage of time. One obstacle facing Russell and his co-plaintiffs was undoubtedly the lack of a tangible body of defendants recognisable by contemporary law as a suable entity. When, however, the duties formerly attaching to the inhabitants, which had, be it noted, all along been enforceable by indictment, came to rest under the Highways Acts on various public bodies and officers capable of being sued without procedural difficulty, the courts were yet able to sustain on other grounds the doctrine of the non-liability of highway authorities to civil actions at the suit of individuals based on non-feasance (see, e.g., *Young* v. *Davis* (1863), 2 H. & C. 197; *Cowley* v. *Newmarket Local Board* [1892] A.C. 345). "Looking at . . . the course of legislation," Pollock, C.B., had said in the Court of Exchequer, in the former case (7 H. & N. 760), "I am clearly of opinion that the Legislature never intended to make a surveyor of highways responsible at the hazard of a jury finding him guilty or not guilty of negligence in not repairing the road." So touching a manifestation of tenderness for a public servant, who would in any other connection have been held to be in breach of a statutory duty but who must here be protected from the "hazard" of a jury's finding, is scarcely more convincing than the ingenious suggestion of the Irish Court of King's Bench to the effect that if the highway authority does not discharge its duties of repairing the highway it can be displaced at the next election (*Dublin United Tramways Co.* v. *Fitzgerald* [1903] A.C. 99, *per* Palles, C.B., quoted by Finlay, L.J., in *Swain* v. *Southern Rly. Co.* [1939] 2 K.B. 560).

But be all this as it may, the principle of immunity for non-feasance is part of the law of highway authorities, and it is once more topical. The plaintiff in *Wilson* v. *Kingston-on-Thames Corporation* (1948), 92 SOL. J. 618, failed in his action because of it, in spite of making strenuous efforts, as so many have done before him, to show that the defective condition of the highway had been caused by the authority's misfeasance and not merely by non-feasance. Mr. Wilson was thrown from his bicycle and injured owing to the existence of a hole in the surface of the roadway. Morris, J., accepted that at some date earlier than about ten months before the accident some repairs had been made in the part of the roadway in question. His lordship, however, appeared to treat it as irrelevant that the defendant's workmen might subsequently have seen a hole at the point and might have patched the asphalt surface with tar macadam, a proceeding which, it was suggested, might lead to the filling becoming entirely displaced. He rejected counsel's argument that if the court were satisfied that some repair was done at the point where the accident subsequently occurred and that that repair could have been but was not made in such a way as to last and be effective at the time of the accident, then the accident could be said to have resulted from misfeasance. The learned judge said that to accept this argument would be not merely straining but also going in the face of the established law. The accident happened not because the defendants effected some temporary repair at some previous date, but because the roadway was out of repair.

Other plaintiffs have been more fortunate, sometimes because the neglect which they have been able to prove against the authority was in fact a breach of a statutory duty owed by the local corporation in some other capacity than that of highway authority. Thus, under the Road Traffic Act, 1930, a local council may be empowered to place studs in the surface of a road for marking purposes. Such powers must be exercised with reasonable care (cf. *per* Lord Parker in *Great Central Railway Co.* v. *Hewlett* [1916] 2 A.C. 511, at p. 519). Accordingly, when studs had been allowed to become defective and a nuisance on the highway, this was an example of non-feasance which could be brought home to the authority by an injured road user (*Skilton* v. *Epsom & Ewell U.D.C.* [1937] 1 K.B. 112). "If such other duties [i.e., those in connection with public health, the Road Traffic Acts etc.] have been undertaken by the body which is also the highway authority, and ill performed, then the highway authority may be sued by the person injured, and the immunity doctrine is no defence," said Scott, L.J., in a similar case concerning an abandoned tram track which had been allowed to fall into a dangerous condition (*Simon* v. *Islington Borough Council* [1943] K.B. 188). The carrying out of civil defence duties also entails a responsibility which is not limited to acts of misfeasance (*Conelly* v. *West Ham Corporation* (1946), 176 L.T. 52).

Just as a highway authority may be liable in its character as a statutory undertaker for other public services, so portions of a roadway may be the responsibility of an individual or body other than a highway authority. It is well settled that the doctrine of immunity for non-feasance cannot be invoked by any such individual or body, notwithstanding that there may be a statutory obligation to maintain the roadway (*Swain* v. *Southern Railway Co.*, *supra*). *Swain's* case concerned a bridge and its approaches maintainable by the railway company under s. 46 of the Railway Clauses Consolidation Act, 1845, and the company was held liable for damage caused to the plaintiff as a result of dangerous ruts in the roadway. Whether the owner of the soil of a private road, say, on a housing estate built but not adopted, is liable for injuries caused by the defective state of the road depends, of course, on entirely different considerations. Private occupiers of property adjoining the highway have to bear in mind their obligation to keep safe for passers-by structures such as fences which if defective may be dangerous (*Harrold* v. *Watney* [1898] 2 Q.B. 320 and cf. the falling elm tree in *Caminer* v. *Northern & London Investment Trust, Ltd.*, *The Times*, 29th November, 1948); and that obligation has been held by Stable, J., to cover an asphalt shop-forecourt which was indistinguishable from the pavement and which had fallen into disrepair (*Owens* v. *Scott and Another* [1939] 3 All E.R. 663). Even a person with no interest in the soil of a highway or in its upkeep may be responsible in damages if he causes an obstruction, such as a pile of débris swept from bomb-damaged property, and injury results (*Almeroth* v. *Chivers* (1948), 92 SOL. J. 71).

Bordering the territory we have been surveying is the line of cases dealing with accidents caused by manhole covers and other structures in the highway. These are commonly the property and the responsibility of a sanitary, gas, electricity or water undertaking which may or may not be operated by the body which is the highway authority. Here it is important to locate exactly the particular defect which causes the accident. The undertakers will be liable if the structure falls into disrepair by their negligence and if this causes damage. They will not be liable in the absence of negligence, for the statutory authorisation which invariably exists is sufficient

to rule out an actionable nuisance (see *per* Lord Porter in *Longhurst* v. *Metropolitan Water Board* [1948] 2 All E.R. 834, at p. 839; 92 SOL. J. 633). In particular, a plaintiff's case against them is hopeless if the evidence shows that the structure is in good repair and that the real cause of the damage is the wearing away of the surrounding portion of the highway, leaving the structure projecting above the surface (*Moore* v. *Lambeth Waterworks Co.* (1886), 17 Q.B.D. 462). Neither does the existence of the box add to the obligations of the highway authority with regard to the area immediately surrounding it (*Chappell* v. *Dagenham Corporation*, *The Times*, 3rd June, 1948).

Accidents to foot passengers arising from the condition of the footpath may sometimes involve the consideration of complicated questions of law and fact, as is demonstrated by *Longhurst* v. *Metropolitan Water Board*, *supra*, in which the House of Lords recently affirmed the decision of the Court of Appeal in favour of the defendant board. Several difficult matters of law had arisen in the courts below and in argument before the House of Lords, but their lordships ultimately decided the case upon an issue of fact which appears to leave open some interesting and important legal questions.

The appellant had observed and reported to the highway authority, the local council, the dislodgment of some paving stones near her house. The council, finding that this condition was apparently due to a leak in the respondents' apparatus under the footpath, informed the respondents, who, in pursuance of their statutory duty, repaired the leak, removing and replacing temporarily some paving stones. The council was notified of the position, but before the arrival on the scene of their pavior to effect a permanent reinstatement of the stones, the appellant was so unfortunate as to step on to a stone which was loose in its seating, and tilted under her weight, causing her to twist her ankle and bruise her foot. The crucial fact in the whole story is that, according to the judge's finding, the loose stone was not one of those which the respondents had moved, though its dangerous condition was attributable to the leak in their apparatus.

In these circumstances the statutory duty of the board to make good the pavement *which they had broken up* was held to be irrelevant. With regard to the stone which caused the injury, their lordships held that the respondents had no reason to suspect any danger. Lord Porter did not think it a proper inference from the evidence that the mere percolation of water would lead even a skilled workman to anticipate that a paving stone was liable to tilt when to all other appearances it was safe. The absence of any reason to suspect danger negatived the existence of negligence on the part of the respondents, for it had not been suggested that the leak itself was the result of their negligence.

The resting of the decision on this ground by-passed two points of law which had figured in the judgments in the Court of Appeal. The judgments of Evershed, L.J., and Somervell, L.J. (177 L.T. 483), may yet, therefore, be cited on the question whether in law there is any duty on a water, gas or electricity undertaker to warn the public of a danger of which he is aware caused by the condition of his apparatus. Evershed, L.J., took the view that there was no such duty. Again, the relevance of the fact that the highway authority have been notified of the condition of the footpath may conceivably be argued in the future. All three members of the Court of Appeal appear to have thought that knowledge on the part of the highway authority would absolve the undertaker from any duty to protect the public by warning. But no encouragement in either of these views is to be gathered from the speeches in the House of Lords. The only certainty seems to be the illogical immunity of the highway authority itself.

J. F. J.

THE GENERAL ANNUAL LICENSING MEETING

BROADLY speaking, the sale by retail of intoxicating liquor in England and Wales is under the control of the licensing justices for the district in which the sale takes place. The powers and duties of the licensing justices are contained for the most part in the Licensing (Consolidation) Act, 1910, and in this article references to sections of an Act of Parliament relate to that Act, unless the contrary appears.

The licensing justices are bound by law to hold a general annual licensing meeting (frequently known as "Brewster Sessions") within the first fourteen days of February in each year, and an adjournment thereof within a month, but not less than five clear days, thereafter (s. 10). They are also required to hold not less than four or more than eight transfer sessions at intervals approximately equally spaced throughout the ensuing year (s. 22). Transfers and special removals of existing licences are usually dealt with at transfer sessions, though the justices in general annual licensing meeting also have power to deal with them; but applications for renewal of existing licences, the grant of new licences, ordinary removals, and applications for certificates under s. 3 of the Licensing Act, 1921, can only be made at the general annual licensing meeting, or, of course, at an adjournment of it (s. 9). Questions relating to permitted hours also have to be determined at the general annual licensing meeting. In this article it is proposed to deal mainly with applications for the grant of new licences.

"Intoxicating liquor" is defined by s. 110 as meaning "spirits, wine, beer, porter, cider, perry, and sweets, and any fermented, distilled or spirituous liquor, which cannot, according to any law for the time being in force, be legally sold without an excise licence." "Spirits" are defined in s. 3 of the Spirits Act, 1880, and "wine," "beer," and "sweets" are defined in s. 52 of the Finance (1909–10) Act, 1910.

By s. 1 an excise licence for the retail sale of intoxicating liquor can only be granted to a person who holds a justices' licence authorising the grant of an excise licence to him; it follows, therefore, that a justices' licence does not of itself authorise the sale of intoxicating liquor, but merely enables the holder of it to apply for an excise licence which, if granted, will authorise the sale.

There are a few exceptional cases, set out in s. 111 of the Act, where a justices' licence is not necessary; even in these cases, however, an excise licence is required. It will also be observed that the provisions of the Act do not apply to sales by wholesale; a retailer's licence granted by the Customs and Excise authorises "sale at any one time to one person of liquor in the following quantities, namely: (*a*) in the case of spirits, wines or sweets, in any quantity not exceeding two gallons or not exceeding one dozen reputed quart bottles; and (*b*) in the case of beer or cider, in any quantity not exceeding four and a half gallons or not exceeding two dozen reputed quart bottles; but not in any larger quantities" (Finance (1909–10) Act, 1910, Sched. I, C. Gen. prov. 1). Quantities in excess of those mentioned require a wholesale dealer's licence, or a manufacturer's licence, both of which are granted by the Customs and Excise authorities without the necessity of a justices' licence, and they are therefore outside the scope of this article.

Justices' licences may be granted annually, or in the case of a new on-licence, for a fixed term not exceeding seven years (s. 14); the licensing year commences on 5th April, and all justices' annual licences run as from that date (s. 41). An annual licence requires to be renewed each year at the general annual licensing meeting, but a term-licence is good for the whole term for which it is granted, without annual renewal.

Justices' licences may authorise the grant of an excise licence for sales either on or off the premises, or for sales off the premises only. Retailers' licences granted by the Customs and Excise expire on 30th September in each year, except in the case of off-licences, which may alternatively be granted to expire on 30th June if the holder also has a wholesale dealer's licence for the same liquor expiring on that date; they may be granted either as on-licences or off-licences, and both are again sub-divided for spirits, beer, cider, wine and sweets. A "spirits on-licence" is also called a "publican's

licence " and covers the sale of beer, cider, wines and sweets, as well as spirits, for consumption either on or off the premises. Curiously enough, there is no power to issue an on-licence for the sale of spirits alone (*Customs and Excise Commissioners* v. *Curtis* [1914] 2 K.B. 335; 78 J.P. 173). A " beer on-licence " is also called a " beerhouse licence " and covers the sale of cider as well as beer for consumption either on or off the premises. The sales authorised by the remaining types of retailers' licences are summarised on pp. 31–34 of Paterson's Licensing Acts with Forms, 1948 edition, and it is not proposed to set them out in this article.

When application is made to the licensing justices at their general annual licensing meeting for the grant of a new licence, they have an absolute discretion either to grant or refuse it (s. 9); their discretion must, of course, be exercised judicially and not capriciously (*R.* v. *Boteler* (1864), 28 J.P. 453); and where justices act capriciously, e.g., where they refuse to enforce an Act of Parliament because they think it unjust, mandamus will lie, and they may be ordered to pay the costs.

A new on-licence, other than one for the sale of wine alone or sweets alone, may be granted subject to such conditions as the licensing justices think proper in the interests of the public (s. 14), and the justices are required by the same section to attach such conditions as they think best adapted for securing to the public " monopoly value." No monopoly value is payable on the grant of an on-licence for wine or sweets, or on the grant of any off-licence.

Monopoly value may be made payable in one sum, or by instalments; it is a capital sum, payable to the Exchequer, and represents the difference between the value which the premises will bear, in the opinion of the justices, when licensed, and the value of the same premises if they were not licensed, but disregarding any profits made by hotels and other premises from sources other than the sale of intoxicating liquor (s. 14, and see *Inland Revenue* v. *Truman Hanbury Buxton and Co., Ltd.* (*The Eagle*) [1913] A.C. 650; 77 J.P. 397).

The fixing of the monopoly value is not an easy matter, and in practice it is generally done by agreement between the applicant for the licence and the Commissioners of Customs and Excise, the licensing justices being merely asked to fix the amount as that already agreed. In cases of difficulty, the Commissioners sometimes request the justices to grant in the first instance a " term " licence for three years and some odd months and to fix a nominal monopoly value, so that the Commissioners may in the meantime ascertain what monopoly value should ultimately be paid on the grant of an annual licence, application for which will then have to be made at the end of the term.

Apart from the question of monopoly value, in the case of on-licences granted in respect of restaurants the justices usually impose conditions prohibiting off-sales, limiting the sale of intoxicating liquor to persons *bona fide* partaking of a meal, prohibiting a bar, and providing for the conspicuous display of a price list.

Once an on-licence is granted, its terms cannot be altered; consequently, if the holder of a beerhouse licence wishes to sell spirits, he must surrender his beerhouse licence on applying for a publican's licence, which, if granted, will be a new licence, and not a variation or enlargement of the old one. Until recently full monopoly value was payable in respect of a new licence so granted, but this has now been remedied by s. 73 of the Finance Act, 1947, which, subject to certain safeguards, enables credit to be given for the monopoly value or values of any licence or licences surrendered on the grant of a new licence.

Although no conditions can be attached to the grant of an off-licence, the licensing justices may ask the applicant to give an undertaking upon any relevant matters; the most usual undertakings relate to limited hours of sale, or sale in bottles only, prohibit Sunday trade, or restrict a wine off-licence to the sale of medicated wines. If the applicant refuses to give any undertaking properly asked for, the justices may decline to grant the licence; and any breach of good faith by the licensee after the licence is granted can be taken into consideration by the justices on any application for a renewal or transfer (*R.* v. *Beesly* (1912), 77 J.P. 19).

The preliminary steps which must be taken by an applicant for a new justices' licence, whether for " on " or " off " sales, are set out in s. 15 of the Act. He must prepare a written notice setting forth his name and address and a description of the licence or licences for which he proposes to apply, and describing the situation of the premises for which the licence is required; this notice must, at least twenty-one days before the application is made, be served on or sent by registered post to the clerk to the licensing justices, the local superintendent of police, and (1) in an urban parish, the clerk to the rating authority; (2) in a rural parish under a parish council, the chairman of the parish council; (3) in a rural parish not under a parish council, the chairman of the parish meeting. The applicant must also advertise notice of his application in a local paper not more than four nor less than two weeks before the application is made, and on such day or days (if any) as may be fixed by the justices. He must also see that notice of the application is affixed and maintained from 10 a.m. to 5 p.m. on the door of the premises, and on the door of the parish church, on two consecutive Sundays within twenty-eight days before the application is made; and on the hearing of the application he must be prepared to prove to the licensing justices that he has complied with these statutory requirements. Further, in the case of an application for an on-licence, at least twenty-one days before the application is made he must deposit with the clerk to the licensing justices a plan of the premises for which he seeks a licence.

If an applicant fails to comply with the statutory requirements in time to bring his application before the general annual licensing meeting, he may none the less apply at the adjourned meeting, and the justices should—and usually do—arrange the adjournment days so as to allow this to be done (*R.* v. *West Riding JJ.*; *Drake's Case* (1869), 34 J.P. 4). The applicant must attend in person unless hindered by sickness, infirmity or other reasonable cause (s. 11), and he may, of course, in any case instruct solicitor or counsel to make the application on his behalf.

Any grant of a new justices' licence, and any ordinary removal of an existing licence, is subject to confirmation by the confirming authority (s. 12). This authority, in the case of a licensing district which is a petty sessional division of a county, is quarter sessions; for a county borough, or borough having ten or more justices, it is the whole body of the borough justices; for a borough having less than ten justices, it is a joint committee consisting of three borough justices and three county justices.

The confirming authority is required by s. 13 (4) of the Act to make rules as to the proceedings on confirmation; these rules commonly provide for the production by the applicant for a new justices' licence, or an ordinary removal, of, *inter alia*, a 25-inch Ordnance Sheet with concentric circles of given radii, usually $\frac{1}{4}$, $\frac{1}{2}$, $\frac{3}{4}$ and 1 mile, centred on the proposed licensed premises, and showing all fully licensed premises coloured red, beer licences coloured blue, and off-licences coloured green. It is therefore incumbent upon any such applicant to obtain a copy of the confirming authority's rules and make sure that they are complied with.

If the application is for an on-licence in respect of premises not yet constructed, or in course of construction, a provisional grant may be made by the licensing justices (s. 33); such a grant requires confirmation by the confirming authority, but even this is of no validity unless and until it is declared to be final by the licensing justices after completion of the premises; such a declaration of finality may be made by the justices either at a general annual licensing meeting or at transfer sessions. Similarly, and *mutatis mutandis*, a provisional grant and confirmation of an authority for the ordinary removal of a justices' on-licence may be made under the same section.

Certain persons, a list of whom is set out in s. 35 of the Act, are disqualified from holding a justices' licence; the premises themselves may be disqualified (s. 36); and in order to qualify at all for a justices' licence the premises must

conform to the requirements as to structural adaptation and annual value set out in s. 37 relating to on-licences, and as to annual value set out in s. 38 relating to off-licences. It is interesting to note that the disqualification under s. 35 which formerly attached to persons convicted of felony has recently been removed (Criminal Justice Act, 1948, Sched. IX).

On an application for a new licence any person may appear without giving notice and oppose it; if nevertheless the licence is granted, such person, and no other, may appear and oppose confirmation by the confirming authority. Here again the rules of the confirming authority may govern the procedure and such rules commonly provide that a person intending to oppose confirmation must, within seven days after the grant of the licence, give written notice of his intention to oppose confirmation to the clerk to the confirming authority and to the applicant, and on failure to give such notice shall be liable to be ordered to pay any costs thrown away by reason of any consequent adjournment of the case by the confirming authority.

E. G. B. T.

Company Law and Practice

THE NAME OF THE COMPANY—I

THE SELECTION OF A NAME

BEFORE the coming into force of the Companies Act, 1948, any name could be selected for a company intended to be registered, provided that the last word of the name was "Limited," that the name was not identical with that of an existing company or so nearly resembling it as to be calculated to deceive (except where the existing company was in course of dissolution and signified its consent to the Registrar), and that certain specified words were not used or were used only in particular circumstances. So long as care was taken that the proposed name could not be regarded by the Registrar as so nearly resembling another as to be calculated to deceive, the promoters could thus select a name with some certainty of its being accepted on registration.

Under s. 17 of the Companies Act, 1948, it is provided that no company may be registered by a name which in the opinion of the Board of Trade is undesirable. The Board of Trade have complete discretion in deciding whether or not any proposed name is to be regarded as undesirable and the only way to ensure that the proposed name is likely to be accepted on registration is to inquire from the Registrar of Companies as to availability. Formerly the practice of making such inquiry was merely desirable, but now it must be regarded as almost essential. The Registrar deals with such inquiries with commendable speed and all being well he will reply (usually within 2–3 days) on Form C.27 stating that as a result of a preliminary search it appears that the proposed name does not so nearly resemble that of any other company as to be likely to cause confusion. It will be observed that the Registrar does not commit himself in any way as to whether or not the proposed name is (in the opinion of the Board of Trade) undesirable. The issue of Form C.27 does not confer any proprietorial right to the proposed name, nor is there any certainty that it will be accepted on registration, but as a matter of practice it may be assumed that once Form C.27 has been issued the name will not be refused on registration on the ground of confusion, unless there is any undue delay.

Without any guidance as to the views of the Board of Trade on the principles to be applied in determining whether or not a proposed name is to be regarded as undesirable, much time might be wasted before a suitable name is found. To obviate this difficulty the Registrar has issued for guidance the following general notes:—

(1) A name will not be allowed if it is misleading; for example, if it suggests that a company with small resources is trading on a great scale or over a wide field.

(2) Names cannot ordinarily be allowed which suggest connection with the Crown or members of the Royal Family or suggest royal patronage (including names containing such words as "Royal," "King," "Queen," "Princess," or "Crown").

(3) Names cannot ordinarily be allowed if they suggest connection with a Government department or any municipality or other local authority or any society or body incorporated by Royal Charter or by statute or with the Government of any part of the British Commonwealth or of any foreign country.

(4) Only in exceptional circumstances and for valid reasons will names be allowed which include any of the following words: "Imperial," "Commonwealth," "National," "International."

(5) Names must not include the word "Co-operative" or the words "Building Society."

(6) Names including the following words will be allowed only where the circumstances justify it: "Bank," "Banking," "Investment Trust," "Trust."

(7) If the proposed name includes a registered trade mark the consent of the owner of the trade mark should be produced to the Registrar of Companies.

The Registrar, upon receiving an inquiry as to the availability of a proposed name, will probably, if he is not satisfied that the name is "not undesirable" (e.g., if the name suggests that the company is to operate over a wide field), inquire as to the following:—

(*a*) The amount of the capital with which it is proposed to register the company.
(*b*) The main objects.
(*c*) Particulars of any existing business to be acquired.
(*d*) The area in which the company is to operate.
(*e*) The names, addresses and status of—
  (*i*) the promoters; and
  (*ii*) the proposed directors.
(*f*) The names and addresses of intending shareholders.
(*g*) Any other evidence to justify the use of the name.

If the proposed name includes the name of a person and that person's name is not shown in the particulars of the business to be acquired or among those of the promoters, directors or shareholders, the reason for the choice of the title must be stated.

In order to ensure that these inquiries are answered without delay it is desirable that all the necessary particulars should be obtained as a matter of routine when taking instructions for the formation of the company. Where the proposed name is likely to necessitate inquiry on the part of the Registrar (e.g., "Transcontinental Airways Limited," "Stag Investment Trust Limited"), it is desirable in order to save time to supply all the necessary particulars in the first instance when making inquiry as to the availability of the name.

If the proposed name includes a word representing a registered trade mark or is the subject of an application for such registration in respect of any class of goods in which the company proposes to deal, it will be necessary to produce, on or prior to registration, the consent in writing of the owner of the trade mark (or the applicant, as the case may be) to the use of the trade mark in the name of the company and satisfactory evidence (or an assurance in writing) that the company will be controlled by such person. The Registrar may in a particular case require a letter confirming that search has been made in the Public Search Room at the office of the Registrar of Trade Marks (25 Southampton Buildings, W.C.2) and that no such registration or application has been disclosed by such search. Search at the Trade Marks Registry to ascertain whether or not a word is registered

(or an application pending) in respect of any class of goods is neither a short nor simple task but fortunately the staff at the Registry are most helpful and obliging. It is suggested that The Law Society would earn the gratitude of many practitioners by pressing for some direct liaison between the Registrar of Companies and the Registrar of Trade Marks so that the Registrar of Companies can make inquiries about any word in a proposed name by inter-registry memorandum instead of imposing the necessity for a personal search upon solicitors. In the alternative, facilities at the office of the Registrar of Trade Marks for an official search by post would be most valuable. Experience has shown that official searches by post are more convenient than personal searches not only for solicitors but also for the registry concerned.

Apart from s. 17 of the Companies Act, 1948, and under the general law, an injunction can be obtained to restrain the registration of a company under a name which is calculated to deceive the public into thinking that the company's business is that of the complaining party. It is not necessary for the complaining party to prove actual knowledge of the possibility of such deception or an actual intent to deceive but only that deception is probable (*Reddaway* v. *Bentham, etc., Co.* [1892] 2 Q.B. 639; Lord Halsbury, L.C., in *Cellular Clothing Co.* v. *Maxton* [1899] A.C. 326, 334–335). Some instances of cases where an injunction has been granted are tabulated below:—

Proposed Name	*Complaining Party*
Albion Carriage and Motor Body Works Limited ..	Albion Motor Car Company Limited.
British Legion Club (Street) Limited	The British Legion.
Louis Tussaud Limited ..	Madame Tussaud & Sons Limited.
R. Harrod Limited ..	Harrods Limited.

Where a company has been registered under a name calculated to deceive, the court may, as was done in the case of *Société Anonyme des Anciens Etablissements Panhard et Levassor* v. *Panhard Levassor Motor Company Limited* [1901] 2 Ch. 513, order the members either to change the name of the company or to wind it up.

J. W. M.

A Conveyancer's Diary

SOME FURTHER NOTES ON THE ADMINISTRATION OF A SMALL ESTATE

THE suggestions which appeared under the heading "Administration of a Small Estate" in this "Diary" on the 30th October seem to have aroused some interest among my readers, a number of whom have written to me with problems of a similar kind. The difficulty implicit in all these problems is that of the reconciliation of divergent interests for which the Administration of Estates Act, 1925, offers no practical solution. The code provided by that statute is one thing: realities in a hard world are another. "The main duty of a trustee is to commit *judicious* breaches of trust," runs the famous *dictum* ascribed to his old master, Selwyn, L.J., by Lord Lindley (*Perrins* v. *Bellamy* [1899] 1 Ch. 797, 798). But when the trustee is also a beneficiary it behooves him to ensure that when the reckoning comes any benefit he has received from a breach of trust of his own commission should be more than balanced by some countervailing advantage accruing to the estate as a whole as a result of the transactions of which the breach of trust forms a part.

The specific case dealt with in my earlier notes may be recalled in a few words. An intestate leaves a widow and an infant child, and the only considerable asset is a house which the widow-administratrix wishes to retain and occupy. The retention of the house will afford the widow a substantial advantage, to which she is not entitled by the letter of the Act, and will also deprive the infant of the income of a portion of the proceeds of the sale of the house to which, by the same token, the infant is entitled. The problem is one essentially of estate accounts, and I suggested certain financial arrangements the result of which, in my view and on the facts of the particular case under consideration, would be that the widow would have debited against her interest in the estate an amount in excess of that to which she could look if the estate were administered in strict accordance with the Act. On that footing, if the worst comes to the worst, the widow in her capacity as trustee could reasonably ask for relief in respect of the breach of trust, as her course of action could not be said to have worked to the disadvantage of the other beneficiary; indeed, the contrary would be true.

But in order to estimate the recompense that should be made by the widow (bearing in mind the fact that she will be a trustee of the estate during the infant's minority) it is necessary to arrive at some computation, in terms of money, of the value to her of her continued ability to reside in the house. This raises great difficulties, as a correspondent with a similar problem before him has written. "The house," he writes, "has its concession value at the date of death which might either be one of a house with vacant possession or of a house let at the standard rent with a controlled tenant in occupation. The widow, by remaining in possession, is not only enjoying the house but could also be considered to be a trustee taking advantage of her position, and we have had many discussions in this and other cases as to whether the standard rent should be used, or the rent the property would command apart from the Rent Restrictions Acts, or some other rent, bearing in mind the fact that the lady, as well as being a widow interested in the estate, is also the trustee in charge of it for an infant."

Now I think it is as well, before going to the root of the matter, to remember that as between the trustee and the estate there can be no question of rent, as such. A trustee is not capable of taking a lease of any part of the trust property; whether the best rent is reserved or not, any such lease may be avoided on the application of any person interested in the estate (*Att.-Gen.* v. *Clarendon* (1810), 17 Ves. 491, 500). The matter in issue is the amount of the recompense which the widow ought to pay or provide for (it will often be a question of book entries rather than actual payment) so that she may be in a position to ask for relief, at any given moment, for the *prima facie* breach of trust.

On the other hand, in determining the amount of such recompense, the value of the house in the open market is clearly relevant. How that value is to be computed approximately depends, to some small extent, on whether the house is subject to a standard rent within the meaning of the Rent Acts or not. If it is not, then the matter may be looked at in this way. A trustee has power to let (L.P.A., 1925, s. 28 (1); S.L.A., 1925, s. 41), but on general principles he must not let except at the best rent that can be reserved. He may not let to himself, as we have seen, but in order to be in a position to seek relief, and not to be charged with any deficit, a trustee who does "let" to himself in circumstances in which he may fairly say that the breach of trust he has committed was a "judicious" breach of trust, he must ensure that the estate has not suffered as a result of the "letting"; and the only way he can do that is to show that the estate has, in broad terms, received at least as much as the result of his continued occupation as it would have done had the property been let, quite properly, to a third person. That is the principle I would recommend; its application obviously depends on the facts of each case.

If the house is subject to a standard rent, it is arguable that the maximum which could be derived from the "letting" would be the standard rent and no more. But this argument will not, in my view, hold water. In present circumstances there

would be no difficulty in disposing of a house subject to a standard rent, but with vacant possession, at a price equal to, or very nearly equal to, the amount the house would realise if offered with vacant possession but if no standard rent were applicable thereto. A trustee who is not troubled with the problem under consideration—the desire to retain possession on some terms—would not be justified in letting a house forming part of the trust property at a controlled rent of, say, 5s. a week if he could sell it with vacant possession for £1,000. In such a case, if the house is let (to use a convenient but dangerously misleading word) to the trustee, the return required by the estate should, I consider, be at least equal to the return which its purchase price, if sold with vacant possession, would yield if put out at the rate currently yielded by investments authorised for the investment of trust funds. The standard rent applicable to the house, as such, is thus not a material factor to be taken into account.

But the ascertainment of a fair "rent" is only the start of the calculations necessary to arrive at the correct figure of what the recompense to the estate should be, and other matters must be considered. For example, does the retention of the house mean that a widow trustee will be deprived of her immediate right to realise her charge for £1,000 on the residuary estate? Will she become liable personally (as normally would be the case) for repairs? Will any infant beneficiary live with her and share the benefit of continued occupation? Are there any incumbrances on the house, and how will they be discharged? Some allowance must be made for all factors of this kind, and the ultimate result will depend on the circumstances of each case. But on whatever footing the accounts are opened in a case such as this, consideration of the standard rent, as such, should not, I think, enter into the matter at all.

"A B C"

Landlord and Tenant Notebook

"THE VALUE TO THE TENANT"

THE decision in *Artillery Mansions, Ltd.* v. *Mabartney* (1948), 92 SOL. J. 617, contains useful material for those who may have occasion to advise landlords or tenants of dwelling-houses let at a rent which includes payments in respect of attendance or the use of furniture—perhaps still more useful in the case of clients about to let or take such premises and who appreciate the importance of acquiring wisdom before the event.

During the recent war, the plaintiffs let a London flat to a journalist concerned particularly with agricultural matters. It was a flat in a block of service flats and they covenanted to provide for the cleaning of rooms and furniture and of windows, the lighting of fires and sweeping of chimneys, and for valeting and general attendance. In view of the nature of the tenant's calling, which would entail frequent absences from London, the plaintiffs agreed, according to their evidence, to allocate to these services a sum ("additional rent") much less than the figure which would otherwise have been fairly attributable to them. A few months after the tenancy had commenced, the grantee assigned his interest to the defendant, a lady to whom the services were worth much more. The tenancy having been determined, she claimed the protection of the Rent, etc., Restrictions Acts, and in the action for possession which the plaintiffs then brought they relied on proviso (i) to s. 12 (2) of the 1920 Act, as amended by s. 10 (1) of that of 1923, contending accordingly that the flat was a dwelling-house *bona fide* let at rent which included payments in respect of attendance, the amount of rent which was attributable to the attendance, regard being had to the value of the same to *the* tenant, forming a substantial portion of the whole rent. It was common ground that if the value of the services to the grantee were to be the decisive factor, that value would not be a substantial proportion of the total rent. (It is interesting to note that Tucker, L.J., used the word "proportion" and not "portion"; the effect of *Palser* v. *Grinling*, *infra*, is indeed that there is no distinction; incidentally, the Furnished Houses (Rent Control) Act, 1946, when excluding lettings including board, saves those at a rent of which the value of the board to the lessee does not form a substantial proportion).

The first question to be decided, then, was whether *the* tenant in the amending provision meant the grantee or the tenant for the time being. There was no direct authority on this, but, apart from the consideration that if the latter view were correct it would mean that a dwelling-house could change status an indefinite number of times during the currency of a tenancy, an undesirable and confusing consequence as Tucker, L.J., described it, assistance was to be derived from the important decisions in *Palser* v. *Grinling*, *Property Holdings Co., Ltd.* v. *Mischeff* [1946] K.B. 641, 645 (C.A.), affirmed [1948] A.C. 291. In neither of those cases had an assignment affected the issue; but in *Palser* v. *Grinling*, Morton, L.J., had approved the taking of the parties' own valuation of services as a genuine estimate and Lord Simon had interpreted "value to the tenant" as value to the particular tenant whose lease was under examination and to the average or normal tenant of that class of property. Moreover, in *Property Holdings Co., Ltd.* v. *Mischeff*, dealing with an argument that a sub-lease was tantamount to an assignment, Lord Simon had said that valuation should take place by reference to values at the date of the head lease if that contention were sound. These passages, of course, supported the proposition relied on by the defendant in *Artillery Mansions, Ltd.* v. *Mabartney*, for the estimate must be agreed with the grantee and at the time of the grant.

This left the question whether what was said by Morton, L.J., in *Palser* v. *Grinling* with regard to the parties' own valuation of furniture was to be applied to such a valuation of services; there was one essential difference, in that furniture could be set out in a schedule while services varied according not only to the habits of, but also to the amount of residence put in by, a particular tenant. One would ring the bell more often than another; one would be more often away than another.

Here another part of the judgment of Morton, L.J., in the case cited was invoked: the learned lord justice had said that special circumstances might provide grounds for attributing to the tenant of the particular flat either more or less than his proportion of the cost of providing attendance. *Prima facie*, an undertaking to carry coals would be worth as much to one tenant as to another, but if a tenant could prove that when the lease was negotiated he told his landlord that he did not require this service, but the landlord insisted on using his usual form of lease, it would be open to the judge to discount the value. The passage concludes with: "I think the important point is: What did the parties contemplate at the time when the lease was granted?" Tucker, L.J., agreed, pointing out that no criticism had been offered of this view by the House of Lords. In the case before them, the evidence warranted the inference that a *bona fide* pre-estimate had been made of the value of the services to the frequently-to-be-absent grantee.

The importance of the last point to those advising landlords and tenants of properties let with attendance, service or furniture lies in the fact that usually the agreement, however carefully drafted, will not contain even a clue to the vital problem. The excess of zeal displayed by certain Furnished Rent Tribunals has given the Divisional Court occasion to remind such bodies not to read into a contract what it does not contain; e.g., in *R.* v. *Croydon, etc., Rent Tribunal; ex parte Langford Property Co., Ltd.* (1947), 91 SOL. J. 435; *R.* v. *Hampstead, etc., Tribunal; ex parte Ascot Lodge* [1947] K.B. 973; *R.* v. *Paddington, etc., Tribunal; ex parte Bedrock*

Investments [1947] K.B. 984. But when a tenancy agreement does provide that the landlord shall provide furniture or services, it is the function of the court to assess their value, though it may, as we have seen, be assisted by a *bona fide* estimate made by the parties themselves.

What may be more important is this: the tenancy agreement in *Artillery Mansions, Ltd.* v. *Mabartney* contained a tenant's covenant against alienation without consent, which was not to be unreasonably withheld in the case of a respectable and responsible intending assignee or under-tenant. Consent had been duly sought and given; but in the light of the decision it is worth considering whether in such circumstances a landlord, while satisfied as to respectability and responsibility, might not reasonably refuse it. Certainly, if the view of what is reasonable expressed in the *obiter dicta* of Lord Dunedin and Lord Phillimore in *Tredegar* v. *Harwood* [1929] A.C. 72 indicates the correct criterion—one can act reasonably while considering one's own interests only—it would not be unreasonable to refuse consent to an assignee who would demand as of right more in the way of service and attendance than the assignor. While even if one considers the principles laid down in *Houlder Bros.* v. *Gibbs* [1925] Ch. 575 (C.A.), the last word on the subject, there was, in that case, as in *Palser* v. *Grinling, supra*, an important reference to what was in the contemplation of the parties when the contract was made; and this would not include an assignment to a more exacting tenant.

R. B.

NEW LAMPS FOR OLD

THIS is the season of anticipation for old and young alike; shopping and the other activities that precede the Christmas festival are well under way. In the theatres, producers are busy with contracts and actors are learning their lines for the annual season of pantomime. In thousands of homes all over the country the younger members of the family are eagerly looking forward to their annual visit to the local playhouse, that palace of delight, scintillating with myriad lights, flashing with a thousand colours and redolent with that odour which, in the minds of grown-up children, is still associated with a visit to the pantomime—the Christmassy smell of oranges. In a few short weeks, serried rows of young faces, laughing and serious, will be breathlessly following the romance of Cinderella, the magic arts of Mother Goose, the horticultural activities of Jack of the Beanstalk, the rise to fame of Dick Whittington and the adventures of Aladdin and his Wonderful Lamp.

It is not, however, to be expected that this plethora of cheerfulness and fun will be poured into the laps of the children without the raising of dissentient voices. This is an age of regimentation, and it is not so very long since the education committee of a certain local authority objected to the retention of the time-honoured Punch and Judy show on the ground that the story was immoral, that Punch was an anti-social character and that the triumph of wickedness represented in the showman's booth was calculated to produce the worst possible impression on immature minds. *Corruptio optimi pessima*, said the council, and accordingly Punch and Judy must go. To this type of mind all such things are dangerous, and we must therefore be prepared to face the possibility of a Pantomime Purge.

To escape this gloomy fate it is suggested that producers should devote their attention to the desirability of combining entertainment with education; at a time when the impact of statutes and regulations upon the multifarious details of daily life is heavier than ever before, the occasion should not be neglected of instilling into the young the legal implications of the events that will pass before them on the pantomime stage.

The story of Aladdin affords an excellent example and opportunity. A brief introduction, dealing with the rudiments of the law of contract, combined with a slight annotation of the text, will present to the youthful audience a pretty legal problem in a most attractive form.

It will be remembered that the crisis of the story is reached when the Magician, determined to recover from Aladdin the Wonderful Lamp of which he has become possessed, disguises himself as a lamp-exchange agent, and goes from door to door crying "New lamps for old!" And readers will remember how Aladdin's mother, knowing nothing of the magical qualities of the old and dirty lamp in the storeroom of the house, exchanges it on request for a brand new article, similar in appearance, but alas! of the most ordinary kind.

Was the contract of exchange valid, voidable or void?

The consideration for the handing over of the old lamp was of course the delivery of the new—an unequal exchange and an inadequate consideration. But in cases not involving fraud the court will not inquire into the adequacy of the consideration, but will leave the parties to make the bargain for themselves (*Bainbridge* v. *Firmstone* (1838), 8 Ad. & El. 743; *Haigh* v. *Brooks* (1839), 10 Ad. & El. 309; (1840), 10 Ad. & El. 323, Ex. Ch.).

Nor does it appear that the transaction was voidable on the ground of fraud or misrepresentation, for the Magician made no representation as to the quality of the new lamp, but merely offered it in exchange for the old.

Could the contract of exchange be vitiated on the ground of mistake? *Bell* v. *Lever Bros., Ltd.* [1932] A.C. 161, would seem to be an authority to the contrary. A mistake as to the quality of the subject-matter of a contract does not affect assent, unless (1) it is the mistake of both parties, and (2) it is a mistake as to the existence of some quality which makes the thing without that quality essentially different from the thing as it was believed to be. The former condition is not satisfied, for the Magician knew well the special qualities of the old lamp of which the other party to the bargain was ignorant. (*Sed quaere*, whether a magician, dealing with a layman in goods known to the former to be magical, is deemed to be in a fiduciary position, thus giving the latter an equitable remedy. There appears to be no authority on this interesting point.) As to the second condition, what was the nature of the special quality alleged? So far as the facts of the story afford any guidance, the special quality consisted in the annexing, to the lamp with which Aladdin's mother parted, of the benefit of an agreement for the services of a Genie, the said benefit being intended to enure to the person or persons for the time being in possession of the lamp and to his or her successors in title, into whosesoever hands the same might come. The question whether such a *benefit* can be regarded as annexed to a chattel does not appear to have been decided; only the annexing of the *burden* of such a contract was upheld, on equitable grounds, in *Lord Strathcona Steamship Company* v. *Dominion Coal Company* [1926] A.C. 108; but apparently not elsewhere. In the absence of authority it is regretfully submitted that the plaintiff must fail on the issue of mistake.

Perhaps it may be successfully argued that the law of agency may be prayed in aid. Aladdin's mother certainly had no title to the lamp, though it was kept upon her premises, and if she purported to dispose of it her action in so doing can only have been as agent for her son. It seems clear from the facts that he had given her no such authority, and it would not seem to have been open to the Magician to plead the doctrine of "holding out".

Readers who are interested in such academic questions are invited to give further consideration to the problem during the Christmas vacation, perhaps as a welcome variation from the traditional after-dinner games.

A. L. P.

OBITUARY

MR. W. G. FORWARD

Mr. William Graham Forward, solicitor, of Messrs. William Forward, Son & Donnithorne, of Axminster, died on 29th November. He was admitted in 1900.

MR. H. GARROOD

Mr. Henry Garrood, solicitor, of Ledbury, died on 22nd November, aged seventy-three. He was admitted in 1904.

MR. C. MAY, M.A.

Mr. Charles May, M.A., solicitor, for more than forty years a member of the firm of Pedley, May & Fletcher, of Cannon Street, E.C.4, died on 11th November, aged eighty-seven. He was admitted in 1888.

MR. W. OGDEN

Mr. William Ogden, solicitor, of Oldham, died on 6th November, aged eighty-five. He was admitted in 1886.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

The Legal Aid Bill

Sir,—Having been for some years in charge of a legal aid centre in Bethnal Green, which does not confine itself to giving legal advice alone, but tries to carry all its cases to a conclusion, I should like to support with all possible emphasis the remarks made by your contributor about the inadequacy of the proposals in the Legal Aid Bill which deal with legal advice.

Only about 7 per cent. of our clients proceed as far as litigation. Possibly another 7 per cent. would do so if they were not afraid of the burden of costs should they lose, and if the facilities we could offer were better. Of the remaining 86 per cent., about one-half can be satisfied with advice alone; the rest need far more, but the ponderous machinery of the Legal Aid Bill, which may be adequate for litigation, is quite inappropriate for other cases as the example given in your article clearly shows. Moreover, what sort of person does The Law Society expect to staff its proposed advice centres? I can imagine no more frustrating work than to spend day after day advising clients whom one will never see again, and in the conduct of whose cases one will have no interest or control. Such an office, too, will lead to apathy and irresponsibility, for the oral adviser will never see the results of his advice, and it is quite possible that for years he may advise wrongly on a particular point without his mistake ever being shown to him.

If the legal aid scheme is to succeed, and those of us who have been engaged in this kind of work know how vital it is that it should succeed, it is absolutely essential that a far larger part should be played in the scheme by the advice centres, and that their powers should be very greatly enlarged. Only in that way will suitable candidates be found to staff the legal advice centres, and only in that way will the other part of the scheme which deals with litigation have the opportunity to give the service which is required.

With the rest of your contributor's excellent article I can only say that I am in complete agreement.

Lastly, I should like to say that I have not yet met anyone with experience of poor man's lawyer centres who does not agree with the views set out in the article, and I should have thought it would have been advisable had The Law Society consulted those bodies which engage in the work. It may be that they have done so; I can only say that the settlement to which my office is affiliated, which deals with some 2,000 cases a year in the East End of London, has not, to my knowledge, ever been asked for its views.

J. S. TAPSFIELD.

London, E.2.

Sir,—As solicitors engaged whole-time at a legal advice centre we feel obliged to emphasise that the daily experience of the centre entirely confirms the point made by your contributor in your issue of the 4th December that the proposed "State Scheme" will not work effectively if the projected legal advice centres are confined to the giving of oral advice.

There is, in fact, a division of legal aid work into—

(1) business which will certainly or very probably result in actual litigation;

(2) business which is either definitely non-contentious or which may reasonably be expected to be actually concluded without litigation.

It is our contention that (2) cannot be effectively dealt with unless the Bill is amended to enable legal advice centres to write letters and to negotiate, at any rate, in the cases of persons so poor that their liability to contribute would be nil. By such amendment the ordinary practitioner will not lose any business and be relieved of work that would often be an embarrassment.

The cost of running the centres would be greater because larger staffs would be required, but the difficulties of persons often very infirm and completely lacking in experience of business could be more conveniently and expeditiously dealt with and the sense of grievance in large sections of the public thereby prevented.

"THREE LEGAL ADVISERS."

A meeting of the United Law Society was held in the Barristers' Refreshment Room, Lincoln's Inn, on Monday, the 22nd November, 1948. Mr. O. T. Hill was in the chair. The motion "That this house does not wish to become rich" was defeated by two votes.

NOTES OF CASES

HOUSE OF LORDS

COMMON EMPLOYMENT: CABLE REPAIRER AND TROLLEY-BUS DRIVER

Lancaster *v.* London Passenger Transport Board

Lord Porter, Lord Uthwatt, Lord du Parcq, Lord Normand and Lord Morton of Henryton. 29th October, 1948

Appeal from the Court of Appeal (91 SOL. J. 409; 63 T.L.R. 457).

The plaintiff was on the platform of one of the defendant board's tower wagons, repairing an overhead line which acted as a support for the overhead cable conveying current for electric trolley-buses, when the driver of one of the board's trolley-buses negligently allowed the top of his vehicle to strike the platform on which the plaintiff was working, in consequence of which he was seriously injured. The plaintiff was employed in the board's overhead electrical department (maintenance), while the driver in question belonged to the traffic department. The Court of Appeal, affirming Henn Collins, J. (90 SOL. J. 614; 62 T.L.R. 718), held that the plaintiff, in the position in which he was working, was subject to a special risk of injury by other trolley-buses, and was therefore in common employment with the trolley-bus driver and so not entitled to damages. The plaintiff appealed. The House took time for consideration.

LORD UTHWATT—LORD NORMAND and LORD MORTON agreeing—said that the plaintiff was exposed to a general risk of the highway, and not a special risk arising out of the relation between himself and the driver. The risk to him from the operations of a trolley-bus driver did not differ, either in character or in probability of maturing into an accident, from the risk attaching to the operations of any other driver of a high vehicle along that road. The presence of the tower wagon made no more demands on the skill of trolley-bus drivers than it did on that of the drivers of other high vehicles. Other high vehicles were not so uncommon as to be negligible in estimating the ordinary risks of the road. The plaintiff was accordingly not in common employment with the driver, and was entitled to damages against the board.

LORD PORTER and LORD DU PARCQ dissented. Lord Porter said that the question was whether an ordinary driver, not whether a skilful driver, would not feel himself more circumscribed in his course than would the driver of a vehicle not dependent on electricity from the wires. A trolley-bus driver would, in his (his lordship's) opinion, be more likely to drive near the tower wagon, and, forgetting the total height of his vehicle, to strike it than would a non-electrical vehicle. Appeal allowed.

APPEARANCES: *Vick*, K.C., and *Aarvold* (*William Gorringe and Co*); *Paull*, K.C., and *Armstrong-Jones* (*A. H. Grainger*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

CANADA: ACT ESTABLISHING LABOUR BOARD: VALIDITY

Saskatchewan Labour Relations Board *v.* John East Iron Works, Ltd.

Lord Porter, Lord Simonds, Lord Oaksey, Lord Morton of Henryton and Lord MacDermott. 13th October, 1948

Appeal from the Saskatchewan Court of Appeal.

The respondent company dismissed six of their employees. The employees' trade union thereupon applied to the appellant board for orders requiring the employers to reinstate the workmen and pay them compensation on the ground that their dismissal had been an unfair labour practice within the meaning of s. 8 (1) (*e*) of the Trade Union Act, 1944. The board found that the employers had discharged them in contravention of the Act. It therefore issued orders requiring reinstatement and monetary compensation of the men under s. 5 (*e*). The employers applied to the Court of Appeal in Saskatchewan for orders quashing those orders of the board, the material ground of the application being that the Act of 1944 was *ultra vires* the Legislature of Saskatchewan because it set up a superior, district or county court or tribunal analogous thereto, the judges or members of which were not appointed by the Governor General of Canada in Council, and as purporting to confer judicial power on a body not so appointed. The Court of Appeal accepted that contention, and the board now appealed. (*Cur. adv. vult.*)

LORD SIMONDS, giving the judgment of the Board, said that they did not decide whether the appellant board's power exercised under s. 5 (*e*) was a judicial power, because the elements in its constitution and functions which made it at least doubtful

whether it was in the strict sense a court exercising judicial power at all appeared to lead conclusively to the view that it was not a superior district or county court or a court analogous thereto. In their (their lordships') opinion, the jurisdiction exercisable by the appellant board was not such as to constitute it a court within s. 96 of the British North America Act. It was sufficient to say that it did not, in their opinion, exercise a jurisdiction analogous to that of a superior, district or county court. Appeal allowed. Case remitted for consideration by the Court of Appeal of matters left undecided by them owing to their ruling on the validity of the Act of 1944.

APPEARANCES: *F. A. Brewin* and *M. C. Shumiatcher*, K.C. (both of the Canadian Bar) (*Lawrence Jones & Co.*); *E. F. Leslie* K.C. (of the Canadian Bar) and *Gahan* (*Blake & Redden*); *MacKenna* (*Charles Russell & Co.*) (Attorney-General for Canada, intervener); *F. A. Brewin* (*Lawrence Jones & Co.*) (Attorney-General for Saskatchewan, intervener); *C. R. Magone*, K.C. (of the Candian Bar) (*Lawrence Jones & Co.*) (Attorney-General for Ontario, intervener); *L. D. Currie*, K.C., and *T. D. MacDonald* (both of the Canadian Bar) (*Burchells*) (Attorney-General for Nova Scotia, intervener).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

BONDS DEPOSITED WITH CZECH BANK

Frankman *v.* Anglo-Prague Credit Bank

Lord Goddard, C.J., Asquith and Singleton, L.JJ.
4th November, 1948

Appeal from Cassels, J. (*ante*, p. 143).

The plaintiff was a naturalised British subject. In March, 1939, his mother, a Czech, came to England, where she remained until her death in 1945. In 1935 she had become entitled, through the death of her brother, to three £100 debenture bonds issued by the Skoda Works in Czechoslovakia. The brother had bought the bonds on the London Stock Exchange through the defendant bank, who had, with his consent, deposited them with their London branch. By No. 50 of the bank's conditions of business, "the place of performance . . . of all obligations resulting from the business connection with us shall be . . . the place of that department" of the bank "which has carried out the relevant transaction with the customer." The plaintiff now, as administrator of his mother's estate, claimed the bonds from the bank in the name of its London branch. Cassels, J., held that the place of performance was in Czechoslovakia, that Czech law was applicable, and that, as that law forbade performance of the contract without the permission of the National Bank of Czechoslovakia, which had been withheld, the claim failed. The plaintiff appealed.

LORD GODDARD, C.J.—ASQUITH and SINGLETON, L.JJ., agreeing—said that, while the purchase of the bonds on the London Stock Exchange by order of the bank in Prague would undoubtedly be governed by Czech law under condition 50, the transaction governed by that law came to an end on completion of the purchase. When the bonds were then deposited for security with the bank's branch in England they became subject to the law of this country under condition 11, which provided that, where stock was bought on a foreign stock exchange or received by a bank other than the bank at Prague, the stock would be left, at the purchaser's risk, "deposited with our correspondent, where they shall be subject to the laws of the respective country." The plaintiff was accordingly entitled to delivery of the bonds. Appeal allowed.

APPEARANCES: *Laski*, K.C., and *R. J. S. Thompson* (*W. R. Bennett & Co.*, for *Barrow-Sicree & Co.*, Manchester); *Sir Valentine Holmes*, K.C., and *Ashworth* (*Freshfields*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

WIDOW'S CLAIM TO ARREARS OF MAINTENANCE: FAMILY PROVISION: TIME LIMIT FOR APPLICATION

***In re* Bidie; Bidie *v.* General Accident Fire & Life Assurance Corporation**

Lord Greene, M.R., Somervell and Evershed, L.JJ.
10th, 11th November, 1948

Appeal from Jenkins, J.

The plaintiff, in 1923, was granted a separation order by justices against her husband on the ground of cruelty, providing for payment of £2 per week. Payments were made irregularly until 1928, but in 1929 the husband disappeared and the plaintiff heard nothing more of him until after his death on 16th January, 1945. He had made a will in 1937, but this was not found, and a full grant of administration was made to the plaintiff and one of her sons, on the assumption of an intestacy, on 13th April, 1945. A will was found later, the grant of administration was revoked, and on 7th September, 1946, a grant of probate was made. The plaintiff took out a summons in January, 1947, claiming (*a*) that she was a creditor of her husband's estate for a considerable sum in arrears of maintenance and (*b*) that provision should be made for her under the Inheritance (Family Provision) Act, 1938. Jenkins, J., delivered judgment on 19th April dismissing both claims. On the first, he held, on the authority of *In re Hedderwick* [1933] Ch. 669, and *In re Woolgar* [1942] Ch. 318, that no action would lie to recover arrears of maintenance or alimony after the husband's death. On the second he held that as no proceedings had been taken until more than six months from the grant of letters of administration, the claim failed. The plaintiff appealed. The court dismissed the appeal on the first, and allowed it on the second point.

LORD GREENE, M.R., said that the court were in entire agreement with the judgment below on the first point, and were content to adopt it as their own. On the second point, it was clear that if the testator's will had been proved in the ordinary way, the widow would have had a *locus standi* to apply for relief. The Inheritance (Family Provision) Act, 1938, was concerned only with testamentary dispositions and did not affect the law as to the distribution of intestates' estates. The present summons was taken out within six months of the grant of probate, and it could not have been taken out before that grant. The court could not make any order under the Act until the will was proved. It was contended by the respondents, and the learned judge had held, that the word "representation" in s. 4 must be given its widest meaning as including the grant of letters of administration. But he could not accept this argument. If this were so it would be impossible for a widow, in the case of an after-discovered will, to get any relief at all, if letters of administration remained on foot for six months. Here the real meaning of the word depended on the context and general intention of the Act. No order could be applied for or made unless a will was produced according to the rules under the Act. Therefore "representation" must be limited to cases of probate or letters of administration with the will annexed. The period of six months could not be intended to be a dead period during which no application could be made, but a live period. Further the representation taken out must be with regard to "the testator's estate," and if letters of administration had been taken out it would be impossible to predicate of the deceased that he was a "testator." The existence of a will and the failure of the testator to provide by that will for a dependant was the whole basis and substratum of the Act, which assumed that there was a testator's estate in existence during the six months' period of limitation. The period could not run during a time when an intending applicant could not possibly apply. The appeal must be allowed and the case go back to the Chancery Division to be dealt with.

APPEARANCES: *Pennycuick*, K.C., and *A. de W. Mulligan* (*F. Duke & Sons*); *B. Tatham* (*H. Boustred & Sons*); *J. H. A. Sparrow* (*A. J. Adams & Adams*, for *Frank & Co.*, Truro); *Oliver Lodge* (*W. R. Perkins*, for *Nelson L. Mitchell*, Southend).

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

CHANCERY DIVISION

WILL: CONSTRUCTION: "INVESTMENTS AND SECURITIES FOR MONEY": WHETHER LIFE INSURANCE MONEYS INCLUDED

***In re* Lilly's Will Trusts; Public Trustee *v.* Johnstone**

Harman, J. 5th November, 1948

Adjourned summons.

By his will, made in February, 1938, the testator provided: "Subject to the foregoing legacies and duties and to the payment of all my just debts and funeral and testamentary expenses I give and bequeath all my personal property (other than investments securities for money or leasehold property) including all moneys at my bankers and in Post Office Savings Bank on either drawing or deposit account . . . to my niece . . . absolutely." The testator died in 1947; the net value of his estate was approximately £15,000; his estate included stocks and shares to the value of over £8,000, considerable cash in two banks and two full life insurance policies amounting with profits to some £3,487. The court was asked to determine whether the moneys paid under the life insurance passed to the niece or were within the phrases "investments" or "securities for money" in the exception clause.

HARMAN, J., said that the phrases "investments" and "securities for money" may mean almost anything within

limits according to the context in which they appeared (Jarman on Wills, 7th ed., vol. 2, pp. 1272–1273). In the present case the testator meant thereby Stock Exchange investments, stocks and shares, and by way of precaution, things which were not stocks or shares but were securities, such as debentures, but he did not include the policy moneys in that phrase. It seemed much more probable that he intended these moneys to be used, as they would be available to be used, for payment of his debts and legacies. The policy moneys were, therefore, not within the words of the exception clause, but passed to the niece under the general bequest.

APPEARANCES: *Goff, Myles, J. H. Sparrow* (*Burton, Yeates and Hart*, for *Nye & Donne*, Brighton).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

REGISTRATION OF DEBENTURE: EXTENSION OF TIME: EVIDENCE REQUIRED

***In re* Kris Cruisers, Ltd.**

Vaisey, J. 29th November, 1948

Application to register debenture after time limit.

The company applied under s. 101 of the Companies Act, 1948 (s. 85 of the 1929 Act), for an order extending the time for registration of two instruments of charge dated 7th March, 1947.

VAISEY, J., said that the evidence produced was only just sufficient to satisfy the provisions of the section. The power to extend the time was discretionary. The court should be informed of the exact circumstances which gave rise to the omission to register within twenty-one days, and it was not sufficient to say merely that it was "due to inadvertence," as was often done. The solvency or insolvency of the company was not as a rule a matter for special consideration and *In re Charles & Co., Ltd.* [1935] W.N. 15, was an exceptional case. The usual form of proviso to the order was inserted for the purpose of protecting those who had accrued rights in the assets, but not to protect the inchoate or other rights of unsecured creditors (*In re M. I. G. Trust, Ltd.* [1933] Ch. 542). Omission to register must be due to inadvertence or some other sufficient cause, and it would be such a cause if the secretary of the company were advised by their solicitor that registration was unnecessary. Here the "inadvertence" was due to an obvious mistake; the solicitor thought that the secretary had registered the charge, as he should have done, and the secretary thought the chargee had done so, as he might have done. The section was rather a benevolent section to mortgagees. He proposed to make an order in the usual form, and although satisfied that the company was far from solvent, he thought that that was not a matter to which attention need be paid. In future cases of the kind, the application should be supported by carefully framed evidence, giving full particulars of the nature of any inadvertence or negligence on the part of those whose duty was to comply with the requirements of the Act.

APPEARANCES: *Wilfrid Hunt* (*J. A. & H. E. Farnfield*), for applicant; respondents did not appear.

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

PRACTICE NOTE

Vaisey, J. 29th November, 1948

VAISEY, J., ruled that in the advertisement of a petition to wind up a company the heading must correspond with the heading of the petition itself. The advertisement must not contain any tendentious or illustrative matter (such as "trading as . . . "), on whatsoever grounds it was sought to be introduced.

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

ASSAULT: SCOPE OF SERVANT'S AUTHORITY

Warren *v.* Henly's, Ltd.

Hilbery, J. 9th November, 1948

Action tried by Hilbery, J., with a special jury.

The plaintiff, an actor, on an evening in May, 1947, drove up in his motor car to a garage owned by the defendants followed by members of his troupe in a lorry. While petrol was being put into the car, the plaintiff ascertained from the others that they required petrol also for the lorry. Accordingly, when the petrol had been put into the car he began to drive it away from the pump in order to make room for the lorry. The defendants' garage attendant, thinking that the plaintiff was driving away without paying or surrendering coupons, ran after the car, using violent language. The plaintiff was extremely angry at that conduct of the attendant, who then refused to supply petrol for the lorry. While the plaintiff was then paying and surrendering coupons for the petrol supplied to his car, he saw a police car pass and summoned a police officer from it. The officer, having done what he could by way of pacification, turned away as there was then no cause for any further action on his part. The attendant then asked the plaintiff whether he intended reporting him to his employers. The plaintiff replied "yes," and the attendant struck him a violent blow on the chin, inflicting serious injuries. On being taken into custody by the officer, the attendant admitted striking the plaintiff because he had said that he was going to report him. The plaintiff now sued the attendant's employers as being responsible for their servant's act.

HILBERY, J., at the conclusion of the plaintiff's case, ruled that there was no evidence on which a jury could find the defendants responsible for their servant's act. He said that the facts that the plaintiff had received and paid for his petrol, that no petrol was to be supplied for the lorry and that the plaintiff had turned to his car to drive off when the attendant asked him the question which led up to the blow, showed that at that moment the plaintiff had concluded his business with the defendants. The attendant's act was neither a wrongful act authorised by his employer nor a wrongful and unauthorised mode of doing an act authorised by them: see *Poland* v. *John Parr & Sons* [1927] 1 K.B. 236, at p.240, *per* Bankes, L.J. There was no evidence that the attendant's act was of the class that he was authorised to do: see *per* Scrutton, L.J., at p. 243. He was personally committing an act of vengeance. Reliance was placed for the plaintiff on *Bayley* v. *Manchester, &c., Rly. Co.* (1872), L.R. 7 C.P. 415, at p. 420, *per* Willes, J. But Willes, J., excluded caprice, an expression which covered a grave tortious act like this assault. Judgment for the defendants.

APPEARANCES: *Beney, K.C.*, and *George Pollock* (*Kenneth Brown, Baker, Baker*); *Paull*, K.C., and *F. H. Cassels* (*Simon, Haynes, Barlas & Cassels*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

DIVORCE: WIFE QUESTIONED AS TO ADULTERY

Barber *v.* Barber

Willmer, J. 22nd October, 1948

Point of evidence arising on a defended petition for divorce.

The husband in his petition alleged that the wife on divers dates unknown, and at a place or places unknown, had committed adultery with a man or men unknown to him. That was the only allegation of adultery in the petition, but in particulars and further and better particulars the husband alleged numerous specific instances where the wife had boasted to him of her adultery with divers men. The wife gave evidence-in-chief denying the various occasions on which she was alleged to have committed adultery, and, in particular, the various occasions on which she was alleged to have boasted of adultery. Counsel for the husband thereupon sought to ask her in cross-examination "Have you ever committed adultery?" Objection was taken to the question on behalf of the wife.

By s. 198 of the Supreme Court of Judicature (Consolidation) Act, 1925, ". . . no witness in any" proceedings instituted in consequence of adultery "shall be liable to be asked or be bound to answer any question tending to show that he or she has been guilty of adultery unless he or she has already given evidence in the same proceedings in disproof of the alleged adultery."

WILLMER, J., said that the question turned on the proper construction of the words "the alleged adultery" in s. 198. In his opinion, they meant the adultery alleged in the petition: that was, here, the alleged adultery amounting to a course of conduct over a number of years. It was argued for the wife that the husband could only question her in cross-examination about the particular occasions mentioned in the particulars. In his opinion, that was not so, for the general allegation remained, and the wife had not sought to have it struck out. The case was very exceptional in that the petitioner had been forced to rely on a course of conduct instead of particular acts of adultery as to which evidence could be given. "The alleged adultery" here was that alleged course of conduct. The wife, having given evidence in rebuttal of various specific acts of adultery suggested to her, could quite properly be asked in cross-examination whether she had been guilty of any other acts of adultery. The question was admissible.

APPEARANCES: *Salmon*, K.C., and *Baskerville* (*James & Charles Dodd*); *Karminski*, K.C., and *Trevor Reeve* (*J. H. Bueno de Mesquita*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE ACTION: COMPROMISE SET ASIDE
Tiger and Another *v.* Handley and Others

Wallington, J. 3rd November, 1948

Preliminary issue in a probate action.

The plaintiffs, as claiming to be beneficiaries under a will and codicil, were interested in a probate action relating to those documents in progress in 1946. Their two children, who were similarly interested in the will, were parties to that action. During the trial, the plaintiffs were cited to see the proceedings but, before they had taken steps to appear or be represented, a settlement was reached and judgment given in accordance with it. The plaintiffs' interest under the will and codicil was materially reduced in consequence. They did not sign the compromise, nor did anyone purport to sign on their behalf. They were not present at any stage of the hearing, and alleged that they never knew of the terms of the compromise. In the present action they sought a declaration that the compromise was not binding on them, revocation of the grant of probate made under the compromise, and probate of the will and codicil freed from its terms. The question whether they were bound by those terms was now tried as a preliminary issue in that action.

WALLINGTON, J., referred to the facts that the conduct of the solicitors acting for the plaintiffs' children showed that they had been acting for the plaintiffs as well, and that one of the children was living with the plaintiffs during the trial, and said that he was unable, nevertheless, to hold the plaintiffs bound by the settlement, for they had not signed the terms, nobody had purported to sign on their behalf, and they had not been in court during the proceedings. He accepted their evidence that they knew nothing of the settlement until after judgment; and there was no evidence that their children had authority to bind them. They were plainly entitled to the declaration sought, and the action must proceed on the footing that all the matters in the pleadings were open to adjudication. Declaration accordingly.

APPEARANCES: *Cartwright Sharp*, K.C., and *R. T. Barnard* (*E. B. V. Christian & Co.*) for the plaintiffs; *Karminski*, K.C., and *Victor Russell* (*Theodore Goddard & Co.*); *Hale* (*Reed & Reed*); *Platts Mills* (*Oscar Mason & Co.*) for the various defendants.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time:—

JUDGES PENSIONS (INDIA AND BURMA) BILL [H.C.] [30th November.

Read Second Time:—

CRIMINAL JUSTICE (SCOTLAND) BILL [H.L.] [30th November.

RECALL OF ARMY AND AIR FORCE PENSIONERS BILL [H.C.] [2nd December.

In Committee:—

PREVENTION OF DAMAGE BY PESTS BILL [H.L.] [2nd December.

HOUSE OF COMMONS

Read First Time:—

AGRICULTURAL MARKETING BILL [H.C.] [3rd December.

To amend the Agricultural Marketing Acts, 1931 to 1933, and for purposes connected therewith.

Read Second Time:—

ADMINISTRATION OF JUSTICE (SCOTLAND) BILL [H.C.] [2nd December.

CINEMATOGRAPH FILM PRODUCTION (SPECIAL LOANS) BILL [H.C.] [2nd December.

COAL INDUSTRY BILL [H.C.] [29th November.

NATIONAL SERVICE (AMENDMENT) BILL [H.C.] [1st December.

Read Third Time:—

CIVIL DEFENCE BILL [H.C.] [3rd December.

WAGES COUNCILS BILL [H.C.] [3rd December.

QUESTIONS TO MINISTERS

DEVELOPMENT CHARGES

Mr. BOSSOM asked the Minister of Town and Country Planning if he will issue an explanatory White Paper regarding the payment of betterment charges, with particular reference to charges now being made to persons desiring to build a home.

The MINISTER OF TOWN AND COUNTRY PLANNING (Mr. SILKIN): The Central Land Board have already published a pamphlet, D.1.A., setting out the principles upon which development charge is determined and the arrangements for payment. They have also published a pamphlet, "House 1," giving to buyers and sellers of land for building a house advice in the light of the liability to a development charge; and a further pamphlet, "House 2," is about to be published explaining the arrangements which have been made for those who bought a plot for a house before 1st July, 1948. [30th November.

FACTORY EXTENSION (DEVELOPMENT CHARGES)

Mr. HURD asked the Chancellor of the Exchequer if he will now state the arrangements for offsetting development charges under the Town and Country Planning Act in cases where a factory extension is to be built on land already held for the purpose.

The CHANCELLOR OF THE EXCHEQUER (SIR STAFFORD CRIPPS): This matter has been carefully considered, but I have reached the conclusion that it is not possible to extend to land developed for additional factories the special arrangements made for land developed for a house for the owner's occupation. The treatment to be given to claimants of this kind will be a matter for consideration in framing the Treasury scheme under s. 58 of this Act. [30th November.

The House of Commons will adjourn for Christmas on Friday, 17th December, and reassemble on Tuesday, 18th January, 1949.

RECENT LEGISLATION

STATUTORY INSTRUMENTS 1948

No. 2577. **Death Duties** (Northern Ireland) (Relief against Double Duty) (Malayan Union) Order, 1948. November 26.

No. 2576. Death Duties (Relief against Double Duty)(Malayan Union) Order, 1948. November 26.

No. 2527. **Education** (Compensation Forms) Regulations, 1948. November 23.

No. 2579. **Maintenance Orders** (Facilities for Enforcement) (North Borneo) Order in Council, 1948. Nov. 26.

No. 2553. **Mental Deficiency** (Amendment) Regulations, 1948. November 24.

No. 2581. **National Insurance and Industrial Injuries** (Stamps) (Amendment) Regulations, 1948. November 25.

MINISTRY OF LABOUR AND NATIONAL SERVICE

Factory Form No. 9. Factories Acts, 1937 and 1948. Notice of Occupation. October, 1948.

[The above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, W.C.2.]

TO-DAY AND YESTERDAY

LOOKING BACK

To those who have only heard of Paper Buildings in the Temple it may come as a surprise to find in the Gray's Inn records under the date 10th December, 1735, an authority by the Benchers to one of their number "to treat for the purchase of a chamber one storey high in the Paper Building." This was in the middle of the south side of Holborn Court (now South Square) and the rebuilding of the whole row was in prospect. The mysterious name "Paper Buildings" was apparently descriptive, as one may gather from a passage written by William Harrison, Canon of Windsor and Rector of Radwinter, in which, comparing the solid masonry of Henry VIII's time with his own contemporary Elizabethan building, he says: "Albeit that in these days there may be many goodly houses erected in the sundry quarters of this island, yet they are rather curious to the eye like paper works than substantial for continuance." Later Defoe describes the London houses before the Great Fire "all built of timber, lath and plaster, or, as they were very properly called, paper work and one of the finest range of buildings in the Temple are to this day called the Paper Buildings from that usual expression." In the description of the fire in the Temple in 1679 there is reference to the destruction of "many of the paper buildings" and to "certain chambers described as a sort of paper buildings, abutting on the [Middle Temple] Lane that first took fire."

IN OTHER WORDS

I MISSED the following in the daily Press but found it in the "This England" column of a celebrated weekly: "In ninety-nine cases out of a hundred, said the judge, a man who runs away is guilty but X was the innocent one per cent. . . Mrs. Y

had no right to shout 'Stop that man' when he bolted . . . She could have called out 'Will you please stop that gentleman and kindly ask him to give me his name and address as he has just assaulted me'." For some reason this reminded me of the story the late Sir Arthur Underhill told of the common law judge of great learning and most refined mind and manners who happened to try a case in which the question arose whether the captain or the pilot was responsible for the stranding of a ship on a reef which was visible to the naked eye. The cross-examination of the master by the counsel for the underwriters was on the following lines: "Now, captain, you were on the bridge for ten minutes or so before the ship struck this rock?" "Yes, I was." "And you could see the rock quite plainly?" "Yes." "And the ship was heading straight for it?" "Yes." "Then why did you not give an order to alter the ship's course or to stop her?" "It was not my business to give such an order. The ship was in the possession of the official pilot who was responsible for the navigation." "But surely you could have said something to the pilot?" "What could I have said to a man supposed to have expert knowledge of the place?" Here the learned judge intervened: "You might have said to him 'You goose, you great goose, do you not perceive that you are running onto a rock?'"

JUDGE'S LODGINGS

THERE is apparently trouble in Hertford over the problem of finding lodgings for the judge during the assizes. There is, it seems, no house to be hired, while to buy one and furnish it would involve a considerable loss, as the allowance made by the Lord Chancellor's office is only £300 a year. This news naturally sends one to that mine of information on the circuit towns, the late Lord Justice MacKinnon's book. When he reached Hertford in November, 1936, the night was black and the rain a deluge: "It was so wet that the streets were almost empty and I had much ado to find my way to the Lodgings at Bengeo. The rain continued all the next day and when we went to dine in the evening with the High Sheriff we had to drive through a flood that nearly came over the floor of the car." Bengeo is a village touching the outskirts of Hertford and it is curious that the learned judge, who usually had a keen eye for the ancient and the picturesque, overlooked the charming little 12th century church of St. Leonard, for he makes no mention of it in his notes. His taste was often jarred in his travels by the provision made for the judges. He wrote: "Judges' Lodgings in a county town are the concern of the Standing Joint Committee of Quarter Sessions and the County Council. I have sometimes wished that that august body might be assisted by a sub-committee with some pretensions to taste and with some lady members. When there is a question of redecorating the Lodgings or buying some furniture I can only imagine, judging by the results, that the Committee instruct a builder to do the work and leave all question of style and colour to him, or tell a furniture shop to send round a piece of furniture of his own selection." At Derby in 1930 he found the house repainted "with the most appalling colours." In the sitting room was "a ghastly display of so-called water colours and chrome lithographs." The Under-Sheriff admitted that when the judge was coming a local shop sent round some pictures by arrangement at 15s. a time.

NOTES AND NEWS

Honours and Appointments

Mr. JOHN HERBERT STAMP has been elected Treasurer of Lincoln's Inn for the year beginning 11th January, 1949, and The Right Honourable LORD REID has been elected an honorary Master of the Bench of Gray's Inn.

Mr. ALBERT DENIS GERRARD, K.C., Mr. GEORGE POLLOCK and Mr. HERBERT EDMUND DAVIES, K.C., have been elected Masters of the Bench of the Honourable Society of Gray's Inn.

Mr. ALFRED JOHN HILLS, solicitor, has been appointed Registrar of the Chelmsford, Braintree and Maldon County Court. He was admitted in 1931.

Mr. HAROLD HEWITT, solicitor, has been appointed Coroner for the Darlington Ward of the County of Durham. He was admitted in 1938.

Mr. L. W. HENDERSON has been appointed Assistant Solicitor to the Tonbridge Urban District Council. He was admitted in October, 1948.

The Colonial Office announce the following appointments: Mr. K. H. SIMPSON to be Legal Officer, Malaya; Mr. G. W. M. HENDERSON to be Attorney-General, Uganda; Mr. C. KNIGHT to be Puisne Judge, Tanganyika; Mr. K. K. O'CONNOR to be Attorney-General, Kenya; Mr. I. C. C. RIGBY to be Assistant Judge, Nyasaland; Mr. J. L. H. W. SAVARY to be Senior Puisne Judge, Jamaica; Mr. S. W. P. FOSTER-SUTTON to be Attorney-General, Malaya.

Notes

GIFT PARCELS FOR DOLLARS

With reference to a previous notice dated 29th October, 1948 (*ante*, p. 638), the Board of Trade announce that the Parcels for Dollars Scheme includes residents in the Dominion of Newfoundland.

COMMITTEE ON WEIGHTS AND MEASURES LEGISLATION

The Board of Trade Committee which is reviewing Weights and Measures legislation invites any persons or organisations who wish to submit representations on any aspects of Weights and Measures legislation to write to the Secretary of the Committee, Board of Trade, Millbank, London, S.W.1.

COURT OF APPEAL

NOTICE

As there is not at present sufficient demand for the hearing of Appeals by Courts consisting of two Judges (as recently advertised) under s. 68 (5) of the Supreme Court of Judicature (Consolidation) Act, 1925, the sittings of those Courts will be postponed. It is hoped that they may be able to take place early in next Sittings. Due notice will be given. Meanwhile a third Special List will be opened in Room 136 for appeals from the King's Bench Division (Final and New Trial) List in which parties file a consent to have the appeal heard by two Judges.

1*st December*, 1948. (sd.) GREENE, M.R.

Wills and Bequests

Mr. H. N. Crimp, solicitor, of Torquay, left £42,653.

Mr. F. Sapte, solicitor, of Kilburn, left £63,340.

Mr. N. Ward, retired solicitor, of Tunbridge Wells, left £25,873.

Sir J. J. Stavridi, solicitor, of Dorking, left £40,663 (net personalty £27,207).

Mr. F. A. Argyle, solicitor, of Tamworth, left £14,490 (net personalty £13,495).

Mr. C. H. Nash, solicitor, of Bognor Regis, left £79,278.

Lt.-Col. Percy O. Thomas, solicitor, of Bidborough, left £26,183.

COURT PAPERS

SUPREME COURT OF JUDICATURE

MICHAELMAS SITTINGS, 1948

COURT OF APPEAL AND HIGH COURT OF JUSTICE
CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON GROUP A

Date	Emergency Rota	Appeal Court I	Mr. Justice Vaisey *Business as listed*	Mr. Justice Roxburgh *Witness*
Mon., Dec. 13	Mr. Andrews	Mr. Farr	Mr. Adams	Mr. Farr
Tues., ,, 14	Jones	Adams	Andrews	Adams
Wed., ,, 15	Reader	Andrews	Jones	Andrews
Thurs., ,, 16	Hay	Jones	Reader	Jones
Fri., ,, 17	Farr	Reader	Hay	Reader
Sat., ,, 18	Adams	Hay	Farr	Hay

	Group A		Group B	
Date	Mr. Justice Wynn Parry *Non-Witness*	Mr. Justice Romer *Witness*	Mr. Justice Jenkins *Non-Witness*	Mr. Justice Harman *Business as listed*
Mon., Dec. 13	Mr. Hay	Mr. Andrews	Mr. Jones	Mr. Reader
Tues., ,, 14	Farr	Jones	Reader	Hay
Wed., ,, 15	Adams	Reader	Hay	Farr
Thurs., ,, 16	Andrews	Hay	Farr	Adams
Fri., ,, 17	Jones	Farr	Adams	Andrews
Sat., ,, 18	Reader	Adams	Andrews	Jones

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Editorial, Publishing and Advertisement Offices: 88-90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.

Annual Subscription: £3 inclusive (payable yearly, half-yearly or quarterly in advance).

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